

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

VILLAGE OF CRESTON, Illinois,  
a municipal corporation,

Petitioner,

-VS-

UNION PACIFIC RAILROAD COMPANY  
& ILLINOIS DEPARTMENT OF  
TRANSPORTATION,

Respondents.

PETITION FOR AN ORDER FROM THE  
ILLINOIS COMMERCE COMMISSION  
TO CONSTRUCT AND MAINTAIN A  
PEDESTRIAN CROSSING ON THE  
WEST SIDE OF TRANSIT STREET AT  
ITS INTERSECTION WITH THE  
TRACKS OF THE UNION PACIFIC  
RAILROAD COMPANY DESIGNATED AS  
AAR/DOT #175057K; RAILROAD  
MILEPOST 69.75 IN CRESTON,  
OGLE COUNTY, ILLINOIS.

Chicago, Illinois  
October 25th, 2016

Met, pursuant to notice, at 10:00 a.m.  
BEFORE:

MS. LATRICE KIRKLAND-MONTAQUE, Administrative Law  
Judge

SULLIVAN REPORTING COMPANY, by  
Devan J. Moore, CSR  
License No. 084-004589

1           APPEARANCES:

2                   TESS & CRULL, LLC, by  
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4                   1090 North 7th Street  
5                   Rochelle, IL 61068  
6                   office@tesscrullllaw.com  
7                   for the Village of Creston;

8                   UNION PACIFIC RAILROAD COMPANY, by  
9                   MR. MACK H. SHUMATE, JR.  
10                  101 North Wacker Drive  
11                  Suite 1920  
12                  Chicago, IL 60606  
13                  mackshumate@up.com  
14                  for the Union Pacific Railroad;

15                  MS. JENNIFER R. KUNTZ  
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17                  Room 313  
18                  Springfield, IL 62764  
19                  (217) 782-3215  
20                  jennifer.kuntz@illinois.gov  
21                  for the Illinois Department of  
22                  Transportation;

                  ILLINOIS COMMERCE COMMISSION, by  
                  MR. JOHN R. SALADINO  
                  527 East Capitol Avenue  
                  Springfield, IL 62701  
                  (217) 785-8423  
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                  for ICC Rail Safety Division.

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1 JUDGE KIRKLAND-MONTAQUE: By the power vested  
2 in me by the State of Illinois and the Illinois  
3 Commerce Commission, I now call Docket No. T16-0074  
4 for hearing. This is in the matter of the Village of  
5 Creston, Illinois, Petitioner, versus the Union  
6 Pacific Railroad Company and the Illinois Department  
7 of Transportation.

8 May I have appearances, please. And  
9 let's start with the Village of Creston.

10 MR. CRULL: Russ Crull, attorney for the  
11 Village of Creston.

12 JUDGE KIRKLAND-MONTAQUE: Could you spell your  
13 name, please.

14 MR. CRULL: R-u-s-s, C-r-u-l-l.

15 JUDGE KIRKLAND-MONTAQUE: And your address?

16 MR. CRULL: 1090 North 7th Street, Rochelle,  
17 R-o-c-h-e-l-l-e, Illinois 61068.

18 JUDGE KIRKLAND-MONTAQUE: Thank you. Union  
19 Pacific?

20 MR. SHUMATE: Good morning, your Honor. My  
21 name is Mack, M-a-c-k, Shumate, S-h-u-m-a-t-e. I'm  
22 an attorney for the Union Pacific Railroad Company.

1 We have offices at 101 North Wacker Drive, Room 1920,  
2 Chicago, Illinois 60606.

3 JUDGE KIRKLAND-MONTAQUE: Thank you. And IDOT?

4 MS. KUNTZ: On behalf of the Illinois  
5 Department of Transportation, Jennifer Kuntz,  
6 K-u-n-t-z. My address is 2300 South Dirksen Parkway,  
7 Springfield, Illinois 62764. Telephone of  
8 (217) 782-3215.

9 JUDGE KIRKLAND-MONTAQUE: Staff?

10 MR. SALADINO: Yes, your Honor. Representing  
11 the Rail Safety Section of the Illinois Commerce  
12 Commission, John Saladino, S-a-l-a-d-i-n-o. The  
13 address is 527 East Capital Avenue, Springfield,  
14 Illinois 62701. And my phone number is,  
15 (217) 785-8423.

16 JUDGE KIRKLAND-MONTAQUE: Thank you.

17 Okay. Mr. Crull, are you going to  
18 present a witness today?

19 MR. CRULL: Yes, I am, your Honor.

20 JUDGE KIRKLAND-MONTAQUE: Why don't you have  
21 him -- raise your right hand.

22 MR. CRULL: I might have two, if I can just do

1 both at the same time.

2 JUDGE KIRKLAND-MONTAQUE: That's fine. Stand  
3 and raise your right hand.

4 MR. SHUMATE: I'll have one also, your Honor.

5 JUDGE KIRKLAND MONTAQUE: Why don't you raise  
6 your hand as well.

7 (Whereupon, the witnesses  
8 were sworn.)

9 JUDGE KIRKLAND-MONTAQUE: I'll give you the  
10 floor, Mr. Crull.

11 MR. CRULL: Thank you, your Honor. I would  
12 first call Mr. Mark Painter.

13 May I proceed, your Honor?

14 JUDGE KIRKLAND-MONTAQUE: Yes, you may.

15 MARK PAINTER,  
16 called as a witness herein, having been first duly  
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY

20 MR. CRULL:

21 Q Mr. Painter, would you please state your  
22 name, spelling your last name for the record.

1           A     It's Mark Painter, P-a-i-n-t-e-r.

2           Q     And, at present, you're a Village  
3 attorney -- or excuse me -- a Village engineer for  
4 the Village of Creston?

5           A     That's correct.

6           Q     And Creston is a village in Ogle County,  
7 Illinois, and that village is organized and existing  
8 under Illinois Law?

9           A     Yes.

10          Q     And, at present, the Union Pacific Railroad  
11 has a railway that runs through the Village of  
12 Creston; is that correct?

13          A     That's correct.

14          Q     And there's an open highway rail crossing  
15 in Creston at AAR/DOT #175057K; is that correct?

16          A     That's correct.

17          Q     Have you had the opportunity to review the  
18 petition that we filed in this matter?

19          A     I have.

20          Q     I'm going to hand you what's been marked as  
21 Exhibit A. Do you recognize that?

22          A     Yes, I do.

1           Q     And what is that?

2           A     It is a drawing, a representation of the  
3     existing railroad crossing with the Union Pacific  
4     Railroad and Transit Street in the Village of  
5     Creston.

6           Q     And that fairly and accurately represents  
7     the crossing as it exists today?

8           A     It does.

9           Q     I'm handing you what's been marked as  
10    Exhibit B. Do you recognize that?

11          A     Yes, I do.

12          Q     And what is that document?

13          A     It's a legal description of the area within  
14    the right of way at said crossing.

15          Q     And both of those documents were crafted by  
16    your company; is that correct?

17          A     That's correct.

18          Q     Now, as it relates to the Village of  
19    Creston and this railway, this railway runs  
20    approximately through the middle of town; is that  
21    correct?

22          A     The middle of the town in a north-south



1 direction, and I would say towards the west side of  
2 the town in an east-west direction. Being an  
3 engineer, I will be that specific.

4 Q Okay. And how many road crossings are  
5 there in the Village of Creston that go across that  
6 railroad?

7 A There are three.

8 Q And how many are located -- I guess which  
9 is the nearest one to the Transit Street crossing?

10 A It would be two blocks east. It would be  
11 the Main Street crossing.

12 Q As the town is laid out, can you describe  
13 what's on the north side of the tracks and what's on  
14 the south side of the tracks?

15 A Relative to this particular crossing, north  
16 of the tracks is all residential. On the south side  
17 of the tracks it's primarily residential.

18 If you split the areas that this  
19 crossing is subject to, pedestrians would come from  
20 the north side to go to the school on the south side  
21 from about 8 blocks of residential area.

22 Q Okay. And how are they crossing these

1 tracks at present?

2 A The pedestrians, whether they're students  
3 or other folks, are using the street. They need to  
4 enter into the pavement and cross the tracks, the  
5 crossing there.

6 Q Do you know if there's ever been a sidewalk  
7 crossing at this specific interchange?

8 A I do not.

9 Q Are you aware that the Village has deemed  
10 it necessary, to promote the safety of the school  
11 kids and other pedestrians, to add a 5-foot wide  
12 crossing at this location?

13 A Yes, I'm aware of that.

14 Q Is there any existing sidewalk on the north  
15 or south of this crossing?

16 A If I'm correct, there is existing sidewalk  
17 north and south on both sides of the road away from  
18 the crossing itself.

19 Q Are you aware that those crossings are  
20 currently on the west side of Transit Street?

21 A I'd have to defer that question, I guess,  
22 to Curt.

1           Q     Okay.  I'm handing you what's been marked  
2     as Exhibit C.  It was attached to our petition.  Do  
3     you recognize that document?

4           A     I do.

5           Q     And what is it?

6           A     It's a representation of the same  
7     crossing -- of the UPR and Transit Street -- with the  
8     proposed 5-foot sidewalk crossing on the east side of  
9     Transit Street.

10          Q     Okay.  And you're aware that in this matter  
11     we filed an amendment; whereas, our petition had  
12     initially requested a west side crossing and that  
13     it's been amended to an east side; correct?

14          A     That's correct.

15          Q     And that was done because there would be  
16     some difficulty in constructing a crossing on the  
17     west side?

18          A     Yes.

19          MR. CRULL:  I don't have any further questions  
20     for this witness.

21          JUDGE KIRKLAND-MONTAQUE:  Mr. Shumate, do you  
22     have any questions for the witness?

1           MR. SHUMATE:  Yes, just a couple of questions.

2                           CROSS-EXAMINATION

3                           BY

4                           MR. SHUMATE:

5           Q     Mr. Painter, do you have a plan that has  
6     been developed for this particular pedestrian  
7     crossing from a highway standpoint?

8           A     There are design plans that have been drawn  
9     up as part of a project that the Village has that is  
10    being funded by the Safe Route to School grant that  
11    they have.

12          Q     So I think you've answered my second  
13    question.  The funding for this will be provided by  
14    whom?

15          A     Well, the sidewalks --

16                   At least, specifically, the sidewalks  
17    north and south of the crossing would be funded  
18    through the Safe Route to School grant that the  
19    Village has obtained.

20          Q     Do you know whether that includes the  
21    crossing panels that would be required, to the extent  
22    they're needed?

1           A     I am under the impression that that would  
2     be something that is determined by this hearing.

3           Q     Okay. And then what is your expectation  
4     with regard to signalization at the proposed  
5     pedestrian crossing?

6           A     I've only heard discussions at a kick-off  
7     meeting for the Rail Safety Project that the Village  
8     has relative to this issue.

9                     I don't have specific knowledge of the  
10    crossing mechanisms other than I know that the ICC  
11    had asked the Union Pacific Railroad to provide a  
12    cost estimate and plans for new signals and  
13    pedestrian gates for the east sidewalk at the Transit  
14    location. And that's all I know is that that request  
15    was made.

16          Q     If the Illinois Commerce Commission orders  
17    gates for the actual pedestrian crossing, is the  
18    municipality in favor of that?

19          A     I've been told by Curt Ward, the Village  
20    trustee, that the Village's position on that is  
21    neutral.

22          Q     So you'd defer to the Illinois Commerce

1 Commission?

2 A That's correct.

3 MR. SHUMATE: I have no further questions, your  
4 Honor.

5 JUDGE KIRKLAND-MONTAQUE: Ms. Kuntz, do you  
6 have any questions for the witness?

7 MS. KUNTZ: Just one.

8 CROSS-EXAMINATION

9 BY

10 MS. KUNTZ:

11 Q How long will it take to complete the  
12 project?

13 A The crossing itself, or the --

14 Excuse me. Jennifer?

15 Q Yes.

16 A The crossing itself? The sidewalk within  
17 the railway crossing?

18 Q Yes. Yes.

19 A That's a very short-term project where it  
20 would be no more than a week.

21 Q It would just fall on scheduling to get it  
22 done?

1           A     I'm sorry?

2           Q     It would just fall onto what the scheduling  
3     would be, but it should only take a week to complete  
4     once it's started?

5           A     Yeah, that's my estimate.  It's very  
6     short-term because it's construction of a 5-foot  
7     sidewalk and couple of ADA ramps within the railroad  
8     right of way.  So a contractor should be able to do  
9     that in no more than 5 working days -- what I would  
10    call a week.

11          Q     And is it your plan to have it constructed  
12    by the end of 2016?

13          A     I'm sorry?

14          Q     Is it your plan to have it completed by the  
15    end of 2016?

16          A     That, I'm pretty sure will not happen.  The  
17    plans have not yet been approved by IDOT.  The plans  
18    have to go through that review.  And, basically,  
19    we're waiting to see what happens with the crossings  
20    to be able to finish the plans appropriately.

21          Q     Okay.  Would it be reasonable that it could  
22    be completed by the end of 2017?

1           A     Yes, that's very reasonable.

2           MS. KUNTZ:   Okay.   Thank you.

3           JUDGE KIRKLAND-MONTAQUE:   Mr. Saladino, any  
4   questions for the witness?

5           MR. SALADINO:   Yes, your Honor.

6                       CROSS-EXAMINATION

7                       BY

8                       MR. SALADINO:

9           Q     Mr. Painter, if the Commission were to  
10   approve a new pedestrian crossing at this location,  
11   the installation of the 5-foot sidewalk, is the  
12   Village agreeable to maintaining the concrete  
13   sidewalk up to a point which is 2 feet outside of the  
14   rail, on the outside of the rail, which the  
15   Railroad --

16                    The Railroad maintains anything  
17   between the tracks and 2 feet outside of the rail.  
18   Would the Village be acceptable to maintaining the  
19   portion of the sidewalk outside of those limits?

20           A     John, I will let Curt Ward, who is going to  
21   testify -- he's a Village trustee -- respond to that  
22   directly, if that's okay.



1           Q     Okay.  Yep, that's fine.  Thanks.

2           MR. SALADINO:  I think that's all I have for

3     this witness, your Honor.

4           JUDGE KIRKLAND-MONTAQUE:  Okay.  Anything

5     further with this witness, Mr. Crull?

6           MR. CRULL:  No, your Honor.

7           JUDGE KIRKLAND-MONTAQUE:  Okay.  You may be

8     excused.

9                                 (Whereupon, the witness was

10                                excused.)

11          JUDGE KIRKLAND-MONTAQUE:  And you can call your

12     next witness.

13          MR. CRULL:  If I could please call Mr. Curt

14     Ward.

15          JUDGE KIRKLAND-MONTAQUE:  Okay.  Go ahead.

16          MR. CRULL:  Thanks, your Honor.

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22

1 CURT WARD,  
2 called as a witness herein, having been first duly  
3 sworn, was examined and testified as follows:  
4 DIRECT EXAMINATION  
5 BY  
6 MR. CRULL:  
7 Q Can you please state your name, spelling  
8 your last name for the record.  
9 A It's Curt with a "C". My last name is  
10 Ward, W-a-r-d.  
11 Q And you're a Village trustee for the  
12 Village of Creston; is that correct?  
13 A Correct.  
14 Q And that's a village in Ogle County,  
15 Illinois, and it's organized and existing under  
16 Illinois Law; is that correct?  
17 A Correct.  
18 Q And how long have you been in that  
19 position?  
20 A Approximately, 18 to 20 years.  
21 Q And are you familiar with the railroad  
22 crossing at issue today with Transit Street, better

1 known as AAR/DOT #175057K?

2 A Yes.

3 Q And is it your position that the Village

4 has received a Safe Route to School grant? Correct?

5 A Yes.

6 Q And who does that grant come from?

7 A It comes through the Illinois Department of

8 Transportation. It's federally funded.

9 Q Okay. Is that the same as the Rail

10 Crossing Safety grant, or is that something

11 different?

12 A The Rail Crossing Safety grant is through

13 the Illinois Department of Transportation. I believe

14 it is State funds derived through the -- I'm not sure

15 on the funding.

16 Q And the Village today, in their petition,

17 would be requesting that the cost for the sidewalk

18 that is requested would be apportioned between the

19 Department of Transportation and the Railway; is that

20 correct?

21 A Yes.

22 Q And, specifically, that's the Union Pacific

1 Railroad Company; correct?

2 A Yes.

3 Q As it relates to the pedestrian gate, is it

4 correct what Mr. Painter said, that the Village would

5 defer to the Commission in regards to the necessity

6 of those gates?

7 A Correct.

8 Q Is the Village in a position to afford

9 maintenance if those gates were to be added?

10 A We're not in a financial position to pay

11 ongoing maintenance of the crossing gates themselves.

12 Q Did you hear the question that was asked of

13 Mr. Painter, if the Village would be able to provide

14 maintenance to the sidewalk 2 feet outside of the

15 actual rail? Did you hear that question?

16 A Yes.

17 Q And could you please respond to that

18 question.

19 A The Village certainly could maintain the

20 sidewalk itself within 2 feet of the rail with the

21 best of our sidewalk system.

22 Q Has the Village determined that it's

1       necessary to promote safety of school children and  
2       other pedestrians and that a new crossing be added on  
3       Transit Street?

4             A       Yes.

5             Q       Do you live in the Village of Creston?

6             A       Yes.

7             Q       Have you seen pedestrians cross the rails?

8             A       Yes.

9             Q       Are many of them school children?

10            A       Yes.

11            Q       And is it correct what Mr. Painter had  
12       said, that the school is to the south of the tracks  
13       and then there's an area of residential homes and  
14       also multi-family units that are on the north side of  
15       those tracks? Is that correct?

16            A       That is correct.

17            Q       If the Railroad were to, rather than make  
18       it separate from the existing crossing and instead  
19       widen the crossing that is there to make a pedestrian  
20       crossing, would the Village find that acceptable?

21            A       That would be acceptable.

22            Q       And you would just ask that any crossing be

1       made so it could be ADA compliant; is that correct?

2               A       Correct.

3               Q       And you've also viewed the amendment that

4       was made to our petition; correct?

5               A       Correct.

6               Q       And that was made because it would be very

7       difficult, if not impossible, to make a crossing on

8       the west side of Transit Street; is that correct?

9               A       Correct.

10              Q       So you're requesting today that the 5-foot

11       wide pedestrian crossing be added to the east side of

12       Transit Street?

13              A       Correct.

14              Q       And you would request today that the cost

15       of all sidewalks in the railroad right of way be

16       apportioned between the Illinois Department of

17       Transportation and the Union Pacific Railroad; is

18       that correct?

19              A       Correct.

20              MR. CRULL:  I don't have any further questions,

21       your Honor.

22              JUDGE KIRKLAND-MONTAQUE:  Mr. Shumate?

1           MR. SHUMATE: Yes, I have a question.

2                           CROSS-EXAMINATION

3                           BY

4                           MR. SHUMATE:

5           Q     Trustee Ward, one question for you. The  
6 Railroad will be responsible for the maintenance of  
7 the grade crossing warning devices that are  
8 installed. There have been several hearings that  
9 we've had before the Commission where the Village had  
10 asked for pedestrian treatment, and we don't object  
11 to it. In this case, we do not object. We're in  
12 favor of it.

13                       We do ask the municipality to be  
14 responsible for vandalism to the gates. So if a  
15 child is there and they're on their bike and they  
16 start hanging on the gate and they break it, we will  
17 pay for all of the maintenance, and we'll certainly  
18 do all of the work.

19                       But if it could be shown that the gate  
20 was broken by vandalism, do you know whether or not  
21 the Village would be willing to pay for acts of  
22 vandalism to the gates?

1           A     I can't speak for the entire Village Board.  
2     But as a Village trustee, I would find that probably  
3     acceptable.

4           MR. SHUMATE: I have no further questions, your  
5     Honor.

6           JUDGE KIRKLAND-MONTAQUE: Ms. Kuntz?

7           MS. KUNTZ: Just a few. Thank you.

8                       CROSS-EXAMINATION

9                       BY

10                  MS. KUNTZ:

11           Q     Who have you been talking to with the  
12     Illinois Department of Transportation regarding the  
13     funding?

14           A     Our main contact for our project is Laura  
15     Connolly at IDOT, District 2.

16           Q     And has the District committed you to the  
17     availability of funds for this project?

18           A     Last fall we received documentation that we  
19     were awarded the Rail Safety grant. And we were  
20     awarded the Safe Route to School Grant,  
21     approximately, 2 years ago -- 2 years or 3 years.

22                       So we just asked for an extension for



1 the Safe Route to School Project to allow the  
2 railroad crossing project to catch up.

3 Q You said you asked for an extension. Has  
4 the extension been granted?

5 A We believe so, but we have not heard  
6 anything back from Laura yet. But with talking with  
7 her and -- I cannot remember the -- we just changed  
8 engineers over there.

9 But with talking to them, they seemed  
10 to believe that there was no issue with the two; so  
11 we could coordinate the two projects.

12 Q If I said the name Terry Fountain, does  
13 that sound familiar?

14 A Yes. We've dealt with him on the Railroad  
15 Safety Grant.

16 MS. KUNTZ: Thank you.

17 JUDGE KIRKLAND-MONTAQUE: Mr. Saladino?

18 MR. SALADINO: Yeah. Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY

21 MR. SALADINO:

22 Q Mr. Ward, just to follow up with the Rail

1     Safety Grant, do you know how much that grant was and  
2     what it's specifically supposed to be used for?

3           A     I believe it was somewhere around 600 to  
4     650,000; and it was intended to widen the crossing  
5     surfaces as to provide for our ADA compliant crossing  
6     at both sides of the Main Street crossing and also  
7     one side of the Transit Street crossing.

8           Q     And do you know if there is a match that  
9     the Village has to --

10                   I believe sometimes the funding for  
11     those grants is a 90/10 split where IDOT will fund 90  
12     percent and the Village may fund 10 percent, or the  
13     other parties may fund 10 percent. Do you know if  
14     that's the case?

15           A     There was a match portion discussed at our  
16     diagnostic meeting, but there's been no final numbers  
17     presented to the Village of what our percentage would  
18     be.

19           Q     And do you know if the Commission were to  
20     order the Village to contribute some funds towards  
21     this project, do you know if the Village would be  
22     acceptable to a certain amount or percentage?

1           A     The Village does have limited funds  
2     available, but we would be open to discussion on the  
3     percentage.  It's hard to commit if we don't know  
4     what that number is.

5           Q     No, I understand.  I appreciate that.

6           A     We would be acceptable to doing some match.

7           Q     Okay.  Thank you.

8           MR. SALADINO:  That's all I have, your Honor.

9           JUDGE KIRKLAND-MONTAQUE:  Okay.  Anything  
10    further, Mr. Crull?

11          MR. CRULL:  No, your Honor.  Thank you.

12                               (Whereupon, the witness was  
13                               excused.)

14          JUDGE KIRKLAND-MONTAQUE:  Mr. Shumate, do you  
15    have a witness to present?

16          MR. SHUMATE:  Yes.  I'd like to call Richard  
17    Ellison, please.

18  
19  
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1                   RICHARD ELLISON,  
2     called as a witness herein, having been first duly  
3     sworn, was examined and testified as follows:  
4                   DIRECT EXAMINATION  
5                   BY  
6                   MR. SHUMATE:  
7           Q     Mr. Ellison, would you state your name for  
8     the record.  
9           A     Richard Ellison, E-l-l-i-s-o-n.  
10          Q     Mr. Ellison, by whom are you currently  
11     employed?  
12          A     The Union Pacific Railroad.  
13          Q     How long have you worked for the Union  
14     Pacific Railroad and/or its predecessors?  
15          A     36 years.  
16          Q     And which department are you in?  
17          A     Engineering.  
18          Q     And what's your title?  
19          A     Industrial Public Project Coordinator.  
20          Q     And are you familiar with the crossing  
21     which is the subject of today's hearing?  
22          A     Yes, I am.

1           Q     Would you give a description of the  
2     responsibilities that you have for the Railroad with  
3     regard to grade crossings?

4           A     I deal with federal and local agencies on  
5     putting up crossing gates, expanding road surfaces,  
6     and basically kind of coordinating the project when  
7     it comes in.

8           Q     Have you had an opportunity to visit the  
9     crossing which is the subject of today's hearing?

10          A     Yes, I have.

11          Q     Do you know when the last time you saw the  
12     crossing at Transit Street?

13          A     Last fall, the diagnostics that we had.

14          Q     Okay. Now, at this particular crossing are  
15     there currently any pedestrian facilities, sidewalks,  
16     or anything like that?

17          A     There's sidewalks coming down from the  
18     north, and it stops short of our right of way.

19          Q     So there's no pedestrian treatment at the  
20     crossing today?

21          A     No. No, there's not.

22          Q     Now, I'll ask a couple of questions.

1                   With regard to the project which is  
2   the subject of the petition, does Union Pacific  
3   object to what has been proposed?

4           A     No, we do not object.

5           Q     Okay. Will the Union Pacific be required  
6   to review the plans for the crossing once it's  
7   prepared?

8           A     Yes.

9           Q     And will the Union Pacific be required to  
10  do a portion of the work?

11          A     Yes.

12          Q     And will there be a cost estimate that the  
13  Union Pacific will prepare and submit to the parties  
14  and to the Commission?

15          A     Yes, there is.

16          Q     Now, with regard to the timing for the  
17  construction, what would be --

18                   Based on your knowledge and  
19  experience, how long would it take until this  
20  particular project will be installed?

21          A     Right now it would be probably construction  
22  season 2017.

1           Q     So that's consistent with what the  
2     testimony has been so far; is that correct?

3           A     Yes.

4           Q     How long will it actually take to actually  
5     do the work that the Railroad would be required to do  
6     with regard to the installation, based on your  
7     experience?

8           A     It should take about 4 days.

9           Q     Now, some technical questions:  
10                     How many tracks go through this  
11     crossing?

12          A     There's two.

13          Q     And what portion of the Union Pacific  
14     Railroad System is this on?

15          A     This is on our east-west main line.

16          Q     And in which subdivision of the railroad?

17          A     Geneva Sub.

18          Q     How many trains go through this crossing on  
19     a daily basis?

20          A     There's 58.

21          Q     And what is the speed of the trains that go  
22     through the crossing?

1           A     70 miles an hour.

2           Q     Are they all freight trains?

3           A     Yes.

4           Q     Are there any commuter trains?

5           A     No commuter trains.

6           Q     Are there any Amtrak trains?

7           A     No Amtrak.

8           Q     With regards to maintenance, we've had some

9     testimony with regard to the sidewalk being

10    maintained by the municipality 2 feet from the

11    outside edge of the rail.  Is that typical?

12          A     That's typical, yes.

13          Q     To your knowledge, have there been other

14    cases where the Illinois Commerce Commission has

15    ordered a municipality to be responsible for broken

16    gates if it could be shown that the breakage was

17    caused by vandalism?

18          A     Yes, there is.

19          Q     I'd like to show you what's been marked as

20    Union Pacific Railroad Group Exhibit 1.  Are you

21    familiar with that document?

22          A     Yes, I am.



1           Q     Can you explain what the first page is.

2           A     The first page is just, basically, a Google

3     Earth showing our tracks and the Transit Street

4     crossing.

5           Q     Now, looking at that first page, can you

6     mark with this pen here the approximate location of

7     the grade school that's in the area.

8           A     It's kind of in the lower right-hand

9     corner, south.

10          Q     Due south of that; correct?

11          A     Yes.

12          Q     Okay. And then on Page 2 of Union Pacific

13     Group Exhibit 1, does that show the tracks and the

14     DOT number for the crossing?

15          A     Yeah. It shows the name of the streets.

16          Q     What's the blue line that's on that

17     particular photograph?

18          A     That's an industrial lead that goes into

19     the elevator that's on the south side of the tracks.

20          Q     When you say, "elevator", is that grain --

21          A     A freight elevator.

22          Q     Okay. And that particular sighting, it

1       doesn't meet at the crossing; is that correct?

2               A       That's correct.

3               Q       Will it affect the pedestrian crossing as

4       proposed?

5               A       No, it will not.

6               Q       Okay. I'll direct your attention to Page 3

7       of Union Pacific Group Exhibit 1. What does that

8       say?

9               A       That's basically just a photograph looking

10       north on Transit Street, basically, showing what the

11       crossing looks like.

12              Q       And then I'd like you to look at Page 4 of

13       Union Pacific Group Exhibit 1. And what does that

14       show?

15              A       It's a photograph looking south at the same

16       crossing.

17              Q       Now, in this area, with regard to

18       vegetation, does the sight lines meet the

19       requirements of the Illinois Commerce Commission, to

20       your knowledge?

21              A       Yes, they do.

22              Q       Now, with regard to the topography, is

1     there any land there that might be elevated that  
2     should be reviewed by the Illinois Commerce  
3     Commission with regard to the pedestrian gate?

4             A     Say the question again.

5             Q     With regard to topography, there are  
6     some -- I'll call them mounds -- in the area; is that  
7     correct?

8             A     Yes.

9             Q     Should that be reviewed by the Illinois  
10    Commerce Commission with regard to this particular  
11    hearing as to whether they should be adjusted in any  
12    way, shape, or form?

13            A     I wouldn't think so.  It's outside of our  
14    right of way.

15            Q     Okay.  So the mounds are not on the Union  
16    Pacific right of way?

17            A     That's correct.

18            Q     Okay.  Now, what is the accident history at  
19    this particular crossing?

20            A     There's no accident history at all.

21            Q     Meaning, no accidents?

22            A     Within the last 5 years there hasn't been

1 an accident.

2 MR. SHUMATE: At this point, your Honor, I'd  
3 like to have admitted into the record what's been  
4 referenced as Union Pacific Group Exhibit 1, as  
5 marked by Mr. Ellison on Page 1.

6 JUDGE KIRKLAND-MONTAQUE: Any objection to the  
7 admission of Union Pacific Group Exhibit 1?

8 MR. SHUMATE: No objection, your Honor.

9 JUDGE KIRKLAND-MONTAQUE: Okay.

10 BY MR. SHUMATE:

11 Q Mr. Ellison, one final question for you.  
12 Is there anything that I failed to ask you that you  
13 believe should be -- that that information should be  
14 given to the Judge in rendering a decision with  
15 regard to this matter?

16 A No.

17 JUDGE KIRKLAND-MONTAQUE: Okay. Union Pacific  
18 Group Exhibit 1 is admitted.

19 (Whereupon, Union Pacific Group  
20 Exhibit No. 1 was admitted into  
21 evidence.)

22 MR. SHUMATE: Thank you.

1 JUDGE KIRKLAND-MONTAQUE: I have a question for  
2 Mr. Ellison.

3 EXAMINATION

4 BY

5 JUDGE KIRKLAND-MONTAQUE:

6 Q With 58 trains a day do you know,  
7 approximately, how long that crossing is closed off  
8 for trains? Do you know?

9 A 2 to 3 minutes per train. There's none  
10 that stop on it.

11 Q And normally with these types of projects  
12 isn't it customary for the Railroad to enter into a  
13 construction and maintenance agreement with the  
14 Village?

15 A Yes, it is.

16 Q And does that agreement typically have  
17 terms regarding who's responsible for maintenance in  
18 the instance of vandalism? Is that something that's  
19 negotiated before, or do you rely on the Commission?

20 A It's kind of negotiated in between. The  
21 standard agreements don't really say anything. It's  
22 some of the language that we always put into our

1 agreement.

2 Q So you would rely on the Commission's  
3 decision on that for the language for the  
4 construction maintenance agreement?

5 A Yes. Yes, ma'am.

6 Q Okay. Just curious.

7 JUDGE KIRKLAND-MONTAQUE: All right. So  
8 Mr. Crull, do you have any questions for the witness?

9 CROSS-EXAMINATION

10 BY

11 MR. CRULL:

12 Q So the time lines that you had before --  
13 you said construction season 2017 -- is that due to  
14 the plans that need to be reviewed and proposed as of  
15 yet?

16 A With it being late in the year, that's  
17 where our schedule is right now -- and however long  
18 it takes to get the agreement.

19 Q I guess to go off of the questions relative  
20 to if it were to be ordered -- the crossing signals,  
21 or guards, or gating -- you would be willing to pay  
22 the maintenance other than the vandalism?

1           A     That's correct.

2           Q     How much of the sidewalk area would you be  
3 willing to put in? Would it be only until 2 feet  
4 outside of the rail?

5           A     That is correct.

6           MR. CRULL: May I have a moment, Judge?

7           JUDGE KIRKLAND-MONTAQUE: Sure.

8                               (Whereupon, there was a brief  
9                               pause.)

10          MR. CRULL: No further questions, your Honor.

11          JUDGE KIRKLAND-MONTAQUE: Ms. Kuntz, do you  
12 have any questions for the witness?

13          MS. KUNTZ: No questions. Thank you.

14          JUDGE KIRKLAND-MONTAQUE: Mr. Saladino, do you  
15 have any questions for the witness?

16          MR. SALADINO: Yes, your Honor, I have some  
17 questions for Mr. Ellison.

18                               CROSS-EXAMINATION

19                               BY

20                               MR. SALADINO:

21          Q     Mr. Ellison, if the Commission were to  
22 order pedestrian gates be installed at this crossing,

1 does the Union Pacific have a mechanism to help fund  
2 the pedestrian gate installation, or would the Union  
3 Pacific be willing to help fund any portion of the  
4 pedestrian gate installation?

5 A We normally do, what, like 90/10 or 90/5/5,  
6 or something like that. We would be willing to do  
7 that.

8 Q So if the Commission were to ask the Union  
9 Pacific to fund 5 percent, the UP, as far as you  
10 know, would be willing to agree to that?

11 A Yes.

12 Q Okay.

13 JUDGE KIRKLAND-MONTAQUE: Mr. Saladino, when  
14 you say 5 percent, do you mean the Railroad pay 5  
15 percent or the Village?

16 MR. SALADINO: The Railroad, your Honor.

17 JUDGE KIRKLAND-MONTAQUE: Okay.

18 MR. SALADINO: I'm asking the Railroad if they  
19 would be willing to help fund up to 5 percent of the  
20 installation cost of the pedestrian gate.

21 JUDGE KIRKLAND-MONTAQUE: Okay.

22



1 BY MR. SALADINO:

2 Q And then I want to go a little further,  
3 Mr. Ellison. Does this crossing at Transit Street  
4 currently have circuitry for constant warning time?

5 A That, I don't know right off hand, John.  
6 I'll have to check. I don't think it does. I think  
7 we're upgrading it.

8 Q And I believe that's my assumption as well.  
9 And to go a little further, in order  
10 to upgrade this crossing with constant warning times,  
11 would it be accurate to say that Main Street, which  
12 does not have constant warning time, and also  
13 Woodlawn Road Crossing -- and I can give the DOT  
14 numbers for those. Main Street has a Railroad DOT  
15 number of 175056D, and Woodlawn Road has a DOT number  
16 of 175055W.

17 And my question is, in order to  
18 upgrade Transit Street, which is the subject of this  
19 petition, would it be recommended by the Union  
20 Pacific that we upgrade all three crossings to new  
21 flashing light signals, and gates, and constant  
22 warning time in order to facilitate a pedestrian

1 crossing?

2 A Yes, it would. We would have to upgrade  
3 it.

4 Q And do you recall receiving a letter from  
5 the Illinois Commerce Commission asking for estimates  
6 in order to look at that work and to -- I'm sorry.

7 Are you aware of that letter?

8 A Yes, I am.

9 Q And with that letter was it proposed that  
10 the Illinois Commerce Commission, through the Grade  
11 Crossing Protection Fund, would fund 50 percent of  
12 the cost for the new installation of the lights and  
13 gates at these crossings with constant warning time  
14 at those three crossings -- Woodlawn, Main, and  
15 Transit -- and that the Union Pacific would be asked  
16 to fund the other 50 percent?

17 A I recall that, yes.

18 Q Do you know if the Union Pacific would have  
19 any objections if the Commission were to order the  
20 installation of lights and gates with constant  
21 warning time at these three crossings and ask that  
22 the Grade Crossing Protection Fund fund 50 percent

1       and the Union Pacific fund the other 50 percent?

2               A       No, we wouldn't have a problem.

3               MR. SALADINO:   Okay.   Your Honor, I think  
4       that's all I have.   Thank you.

5               JUDGE KIRKLAND-MONTAQUE:   Anything further,  
6       Mr. Shumate?

7               MR. SHUMATE:   No, your Honor.   Thank you very  
8       much.

9               JUDGE KIRKLAND-MONTAQUE:   Mr. Crull, is that  
10       all that you wish to present today on the petition?

11              MR. CRULL:   Yes, your Honor.

12              JUDGE KIRKLAND-MONTAQUE:   Did you decide  
13       whether you were going to move to admit the  
14       exhibits?

15              MR. CRULL:   I guess I would move to admit  
16       Exhibits 1, 2, and 3 -- or A, B, and C.   I know they  
17       were attached to the petition as well, so I don't  
18       know that it's necessary.

19              JUDGE KIRKLAND-MONTAQUE:   Any objections?

20   (No response.)

21              JUDGE KIRKLAND-MONTAQUE:   Petitioner's A, B,  
22       and C are admitted.

1                               (Whereupon, Petitioner's  
2                               Exhibits A, B, and C were  
3                               admitted into evidence.)

4               JUDGE KIRKLAND-MONTAQUE: I can mark the record  
5       heard and taken.

6                               Given that there is an open issue  
7       about the pedestrian gate, a proposed order will need  
8       to go out. And I would ask the petitioner to work  
9       with Mr. Saladino. That will probably be helpful, I  
10      think.

11              MR. CRULL: He's been very helpful so far; and  
12      I appreciate it.

13              JUDGE KIRKLAND-MONTAQUE: Yeah, in drafting a  
14      draft order for me to use.

15                              Anything else, Mr. Saladino? What is  
16      Staff's position?

17              MR. SALADINO: Yes, your Honor. Staff has no  
18      objection to the Commission issuing an order to allow  
19      for the installation of a 5-foot pedestrian path,  
20      commonly known as the sidewalk, across this railroad  
21      crossing at Transit Street.

22                              We believe that it's in the best

1 interest of public safety for pedestrians, especially  
2 with the location of the school on the south side of  
3 the railroad tracks.

4 We also would recommend that, as part  
5 of this project, just to expand it, that in order to  
6 install -- we would recommend installing pedestrian  
7 gates at Transit Street. And as part of that, we  
8 would recommend upgrading the three crossings that I  
9 mentioned -- Transit, Main, and Woodlawn; all of them  
10 being upgraded to automatic flashing light signals  
11 and gates with constant warning time; and we think  
12 that would provide an extra layer of safety for the  
13 whole community.

14 Staff has no objections to the Grade  
15 Crossing Protection Fund funding 50 percent of the  
16 installation of the lights and gates and the upgrade  
17 to constant warning time. Staff normally doesn't  
18 recommend that Grade Crossing Protection Funds be  
19 used to pay for pedestrian gates. Staff would  
20 recommend that the cost for the pedestrian gates at  
21 Transit Street possibly be split between IDOT funding  
22 90 percent, the Railroad funding 5 percent, and the

1 Village funding 5 percent.

2 And Staff would also recommend  
3 upgrading the crossing surface at Transit Street to  
4 accommodate this pedestrian path, also to be split  
5 between IDOT 90 percent and the Village 10 percent.

6 With that, Staff agrees that a draft  
7 order will be worked on between the parties so that  
8 we can come to an agreement on the funding, and at  
9 that point we can submit it to your Honor.

10 That's all I have. Thank you.

11 JUDGE KIRKLAND-MONTAQUE: Okay. Well, thank  
12 you. I will await, then, to receive a copy of the  
13 draft order.

14 And, again, I will say that we'll mark  
15 the record heard and taken. And that's it. Thank  
16 you very much.

17 MR. SHUMATE: Thank you, your Honor.

18 MR. SALADINO: Thank you, your Honor.

19 HEARD AND TAKEN.

20

21

22